

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:)	Administrative Cause
)	Number: 14-008H
READOPTION OF 312 IAC 22.5:)	
CEMETERIES AND BURIAL GROUNDS;)	(LSA Document #14-106(F))
REGISTRATION AND MANAGEMENT)	

RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULE

A. INTRODUCTION

For consideration is the readoption of 312 IAC 22.5 in its entirety, and without amendment. This article provides standards for the submission, review, and implementation of a development plan within 100 feet of a cemetery. 312 IAC 22.5 can be accessed through the Indiana General Assembly's website at:

<http://www.in.gov/legislative/iac/T03120/A00225.PDF>.

If rules are readopted in their current form without amendments under 312 IAC 2-2-4(b), the Director of the Division of Hearings may approve preliminary action. The Commission retained authority to take final action on readoptions.

The Director of the Division of Hearings approved preliminary action on March 19, 2014. The standard practice is to readopt rules by article, and 312 IAC 22.5 is now submitted for consideration as to final action.

B. READOPTION ANALYSIS REQUIRED UNDER IC 4-22-2.5-3.1 AND IC 4-22-2.1-5

Mitchell Zoll, Director of the Division of Historic Preservation and Archaeology, was appointed Small Business Regulatory Coordinator for the rule readoption. He provided the following analyses of potential impacts to small business for the proposed readoption of 312 IAC 10:

Review under IC 4-22-2.5-3.1

The continued need for the rule.

312 IAC 22.5 consists of rules 1 through 2.

312 IAC 22.5-1 Definitions: This rule provides definitions with applicability to IC 14-21-1, IC 8-1 and IC 14-8-2. The rule does not impose any requirements or costs on small businesses under IC 4-22-2.5-3.1.

312 IAC 22.5-2 Disturbance of ground within 100 feet of a cemetery: This rule provides the standards for submission, review and implementation of a development plan for the erection, alteration or repair of a structure within 100 feet of a cemetery in accordance with the authority and directives of IC 12-21-1-26.5 and with applicability to IC 14-12-1, IC 8-1, IC 14-9-4 and IC 14-34. This rule explains that a development plan should be received, approved and complied with prior to disturbing the ground within 100 feet of a cemetery to erect, alter or repair a structure. Exceptions to this rule include a public utility (IC 8-1-2-1(a)), a surface coal mining and reclamation operation (IC 14-34) and a government entity other than the State.

The rule specifies what information needs to be included in the application for approval of a development plan, including a cover letter, who is conducting the project, the location of the cemetery in relation to the project, descriptive information on the cemetery and its boundaries, a description of the grounds within 100 feet of the cemetery and landowner permission for the project. The rule specifies what procedures are necessary when an application is incomplete or inadequate, for the completion of the review and the authorization of the plan, time frames for review of the development plan, for the conduct of the approved activities and for the modification of those activities.

The rule is necessary for the continued implementation of the regulatory program concerning cemetery development plan requirements administered by the Department and authorized under statutory authority of IC 14-21-1-26.5.

The nature of any complaints or comments received from the public, including small businesses, concerning the rule or the rule's implementation by the agency.

The Department has not received any complaints from small businesses and just a few from others concerning these rules or their implementation.

An occasional comment is that in a few instances a landowner or a developer has a tight time frame for construction and they would like the cemetery development plan to be processed as soon as possible. This can be accomplished as the need arises. There are occasional misconceptions or misunderstandings regarding plan requirements, but these are successfully addressed with brief explanations.

There have been a few complaints that the statute does not afford enough protection for cemeteries and burial grounds. This has been addressed by recent additions to IC 14-21-1 by Senate Enrolled Act Number 1129 regarding excavating or covering over the ground within 100 feet of a burial ground and the requirement that an archaeological plan be part of a development plan if a burial ground is located within an archaeological site.

The complexity of the rule, including any difficulties encountered by:

(A) the agency in administering the rule; or

(B) small businesses in complying with the rule.

This rule provides guidance regarding the protection of cemeteries and burial grounds and information necessary to develop and receive an approved cemetery plan.

Some difficulties encountered through the course of administering the rule have been addressed by recent amendments to the authorizing statute. As stated above, sometimes brief explanations are necessary regarding some of the information to be submitted in the plan.

The rule has been in effect for a number of years and the DNR, DHPA has publicized the rule and conducted training sessions that include information on the rule. There is a list of plan requirements on the DHPA web site. Increasing numbers of agencies and commissions involved in building permits notify builders of the cemetery development plan requirement. Cemetery development plans are not complex and should not affect small businesses if they incorporate the process into their planning and development.

The majority of the time the rule does not impose any requirements or costs on small businesses other than mailing and paper costs, if they prepare and submit the plan themselves. If the boundaries of a cemetery are not known and must be determined, there may be an associated cost. In rare cases where an archaeological site is located within the burial site boundaries, an archaeological plan would also be required as part of the cemetery development plan.

Some cost savings and time savings would occur if the department has existing records on a cemetery or burial ground. The department does not impose unnecessary requirements on cemetery development plans.

The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, or local laws, rules, regulations, or ordinances.

The rule is unique to IC 14-21-1-26.5 in its requirements. The statute makes clear certain exemptions regarding utilities, corporations and surface coal mining and reclamation.

The length of time since the rule was last reviewed under this section or otherwise evaluated by the agency, and the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since that time.

The rule has not been changed since 2002. The rule satisfactorily specifies the range of information necessary to successfully gain approval of a cemetery development plan. The rule is reasonable and necessary to promote the preservation and protection of cemeteries and burial grounds, while specifying reasonable information requirements for obtaining an approved cemetery development plan. Current technological changes and economic conditions have not changed in a way that would warrant rule modifications at this time.

Review under IC 4-22-2.1-5

The degree to which the factors analyzed in a previous economic impact statement have changed since the statement was prepared

None have changed.

Any regulatory alternatives included in the statement under IC 4-22-2.1-5(a)(5)

None

Any regulatory alternatives not considered by the agency at the time the statement was prepared could be implemented to replace one (1) or more of the rule's existing requirements

None

Executive Order 13-03 required agencies to “suspend rulemaking action on any proposed rules for which a notice of intent to adopt a rule...was not submitted to the office of the *Indiana Register* on or before January 14, 2013.” Financial Management Circular 2013-01 restated these requirements and added compliance information. On May 2, 2013, the Director of the Office of Management and Budget wrote to inform agency heads the moratorium set forth in Executive Order 13-03 was not applicable to readoptions.

As specified by Executive Order 2-89 and Financial Management Circular 2010-4, fiscal analyses of the rule readoption proposal were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent to Readopt a Rule, to the Office of Management and Budget and the Legislative Council on June 24, 2014. In a July 10, 2014 letter the Director of the State Budget Agency recommended the proposed rule readoption be approved.

C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION

On April 2, 2014, the “Notice of Intent to Readopt” 312 IAC 22.5 was posted to the *Indiana Register* at 20140402-IR-312140106RNA as anticipated by IC 4-22-2.5-2 and IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 22.5 without changes. The notice also provided that a person had 30 days to submit a written request to the Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If a request had been made, the Commission would have been required to complete the full rule adoption process for the section requested to be readopted separately. No request was made.

The Commission may submit the rule for filing with the Publisher under IC 4-22-2-35 or elect the procedure for readoption under IC 4-22-2. The hearing officer recommends the Commission approve for readoption 312 IAC 22.5, without amendment, for subsequent filing with the Publisher.

Dated: August 19, 2014

Jennifer M. Kane
Hearing Officer